

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

LILLIAN ROBERTS, et al.

Plaintiffs,

**DECLARATION OF
STEPHEN M. KERWIN**

10-CV-00569

-against-

(LEK) (DRH)

DAVID A. PATERSON, as GOVERNOR of the
STATE OF NEW YORK, et al.,

Defendants.

Stephen M. Kerwin, on the date noted below and pursuant to 1746 of Title 28 of the United States Code, declares the following to be true and correct under penalty of perjury under the laws of the United States of America:

1. I am an Assistant Attorney General in the Office of Andrew M. Cuomo, Attorney General of the State of New York, attorney for the defendants. I am of counsel to the Attorney General in this matter.

2. I make this declaration in opposition to the motion of the plaintiffs for a preliminary injunction.

3. This matter is related to four other matters pending before this Court. They are: *Donohue et al. v. Paterson, et al.*, civil action number 10-CV-00543; *Brynien v. Paterson et al.*, civil action number 10-CV-00544; *Smith et al. v. Paterson et al.*, civil action number 10-CV-00546; and *Bowen et al v. The State of New York et al.*, civil action number 10-CV-00549. Those four actions, and the instant one, all challenge the plan by some or all of the defendants to furlough without pay certain unionized employees of the State for one day per week for up to eight weeks. The first such

furlough day was legislatively authorized by Chapter 75 of the Laws of 2010. In each of the four related matters, this Court, on May 12, 2010, granted the plaintiffs temporary restraining orders barring the defendants from implementing the furlough plan, and ordered the defendant to show cause before the Court on May 26, 2010 why a preliminary injunction should not be issued further barring implementation of the plan pending final judgment in the four related matters.

4. On May 19, 2010, the defendants filed their opposition to the motions for preliminary injunctions. That opposition consisted of an affidavit, sworn to on May 18, 2010, by Robert L. Megna with exhibits thereto, and a Memorandum of Law.

5. The instant action was not filed until May 14, 2010, and was not served until May 18 and 19, 2010. It, too, challenges the planned furlough of State employees pursuant to Chapter 75 of the Laws of 2010. On May 17, 2010 the Court similarly granted the instant plaintiffs a temporary restraining order barring the defendants from implementing the furlough plan, and ordered the defendant to show cause before the Court on May 26, 2010 why a preliminary injunction should not be issued further barring implementation of the plan pending final judgment in this matter.

6. The issues raised in the instant matter are virtually identical to the issues raised in the four related matters referred to above. Because of the close identity between this matter and the four earlier-filed actions, I attached hereto as exhibit A a copy of affidavit of Robert L. Megna sworn to on the May 18, 2010 which was filed and served in opposition to the plaintiffs' motions for preliminary injunctions in the four related actions. I offer Mr. Megna's affidavit, which addresses the same issues raised in this

matter as were raised in the four related matters, in opposition to the instant plaintiffs' motion for a preliminary injunction.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 21, 2010
Albany, New York

s/ Stephen M. Kerwin, B/R # 103129
STEPHEN M. KERWIN